

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WARREN LEE MACKEY,

Defendant.

8:19CR329

ORDER

Defendant Warren Lee Mackey moves to hold in abeyance a motion to vacate his criminal sentence under [28 U.S.C. § 2255](#), having filed too early on the mistaken belief that the 1-year deadline ran from the date of his sentencing. Filing Nos. [156](#), [155](#). The motion is granted.

The Court will hold Mr. Mackey's motion in abeyance until the completion of his pending appeal (if the court of appeals reverses his conviction, he will not need to move to vacate it).

If, however, the court of appeals affirms his conviction, it will issue a written decision. Mr. Mackey will have the option to appeal further to the United States Supreme Court within 90 days of that decision. If he does not, his conviction will become "final" on that 90th day. If he does appeal, his conviction will become final when the Supreme Court denies his petition. [Kemp v. United States, 142 S. Ct. 1856, 1860 \(2022\)](#). From *that* date, Mr. Mackey will have 1 year to change or add claims to his motion. After that, he may not be able to change or add claims.

Mr. Mackey will receive notice of the outcome of his pending appeal once the court of appeals makes its decision. His public defender will hopefully provide more specific guidance at that point. Mr. Mackey should follow his attorney's guidance.

IT IS SO ORDERED.

Dated this 24th day of July, 2023.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge